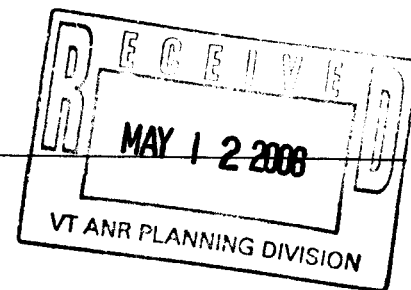


5-19-05  
5-10-06 343

State of Vermont



## LAND USE PERMIT

**CASE NO:** 2W0851-1B

**LAWS/REGULATIONS INVOLVED:**

**PERMITTEES:** Westminster Business Park, LLC 10 V.S.A. §§ 6001 - 6092 (Act 250)

**ADDRESS:** c/o Kasper & Associates, LLC

P.O. Box 574

Walpole, NH 03608

and

Lawrence and Dianne Allen

P.O. Box 178

Westminster Station VT05159

and

Westminster Sand & Gravel

P.O. Box 178

Westminster Station, VT 05159

District Environmental Commission #2 hereby issues Land Use Permit #2W0851-1B pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6092. This permit applies to the lands identified in Book 74, Pages 453-488, and Book 125, Pages 71-74 and 78-90; and Book 133, Pages 171-180, of the land records of the Town of Westminster, Vermont, as the subject of deeds to Westminster Business Park Partners, LLC, and Larry and Dianne Allen, and with the mineral rights held by Westminster Sand and Gravel. The project is located on Route 5 in Westminster Station.

**This permit specifically authorizes the permittees to create six lots, two of the lots [Lot 3 (3.96 acres) & Lot 4 (5.05 acres)] are to be conveyed to Bazin Brothers Trucking Inc. with no development proposed at this time. Three lots will be available for sale as commercial/industrial lots (Lot 1 (5.51 acres) and Lot 2 (5.46 acres) and Lot 5 (10.01 acres)). The remaining lot owned by Lawrence and Dianne Allen [originally 45.50 acres --- 8.79 acres, have been conveyed subject to the agricultural easement--- (See Land Use Permit #2W0851-1A)] shall continue to be subject to the agricultural easement conveyed to the Town of Westminster.**

The permittees, and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Environmental Commission in accordance with the following conditions:

1. The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law and Order #2W0851-1 and Findings of Fact and Conclusions of Law and Order #2W0851-1B, (b) the exhibits on file with the District Environmental Commission, and (c) the conditions of this permit.
2. No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules.


3. By acceptance of the conditions of this permit without appeal, the permittees confirm and agree that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the permittees and all assigns and successors in interest.
4. The District Environmental Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holder file an affidavit certifying that the project is being completed, operated and maintained in accordance with the terms of the permit, as provided by 10 V.S.A. Chapter 151 and the rules of the Environmental Board.
5. By acceptance of this permit, the permittees agree to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
6. All conditions of Land Use Permit #2W0851 and amendments are in full force and effect except as amended herein.
7. Prior to commencement of construction on any of the commercial or industrial lots, the permittees and the lot purchaser or tenant shall file an amendment application.
8. The District Environmental Commission shall retain jurisdiction over Criteria 5 Traffic and 9(K) Public Investments commencing and expiring with the permit.
9. Prior to any further transfer of lots in the park, an Owners' Association ("Association") shall be created, of which Westminster Business Park, LLC and all subsequent lot owners shall be mandatory members. (The exception being the owners of land which will not be developed pursuant to the agricultural easement). The Association and individual owners shall be responsible for traffic monitoring and improvements as set forth in this permit. Westminster Business Park, LLC shall be a member of the Association until such time as all lots have been conveyed to non-affiliated owners. Continuation of the Association and ongoing compliance by the Association and individual lot owners with all conditions of this permit is required.
10. The first two lots in the Westminster Business Park (the "Park") shall be limited to a total of 278 vehicle trips per day, with 51 in the a.m. peak hour and 73 in the p.m. peak hour. These lots, identified as Lots 3 and 4 on the existing site plan, shall be transferred to Bazin Brothers Trucking, Inc. No development is presently proposed for either of the lots. The deed transferring Lots 3 and 4 shall reflect the vehicle trip limitations set forth above and shall not be exceeded without first obtaining an amendment to the permit.

11. Each one of the additional three lots (Lots 1, 2 and 5) to be developed, as identified on the existing plan, shall be limited to 415 vehicle trips per day with 38 in the a.m. peak hour and 38 in the p.m. peak hour.
12. The entire development shall be limited to 1,523 vehicle trips per day with 165 in the a.m. peak hour and 187 in the p.m. peak hour.
13. These trip limits shall be reflected in any deed transferring ownership of the five lots and shall not be exceeded without first obtaining an amendment to the permit.
14. For each application for development of a lot that will be constructed and occupied before October 1, 2010, the Applicant shall certify that the trip generation rates will be within the parameters of Condition 12. The application also shall include information as to whether any High Crash Locations have been identified.
15. By October 1, 2010, the Association shall conduct a traffic study which includes turning movement counts to ascertain if traffic is within the parameters of Condition 12. If the traffic volume exceeds the parameters of Condition 12 or there are any identified High Crash Locations, the Commission shall require the Association to undertake engineering studies and require the collective lot owners in the Association to either make necessary improvements and/or implement mitigation, as determined by the Commission, to reduce trips so that an unsafe and/or unreasonably congested condition does not continue to occur due to the traffic generated by the Association.
16. For any application for development of a lot that will be constructed and occupied after October 1, 2010, the application shall include an updated traffic evaluation and the Commission shall retain jurisdiction to impose additional conditions and may require improvements or mitigation needed to ensure that any unsafe and/or unreasonably congested traffic conditions do not occur. The Commission shall also require that all members of the Association contribute to the costs of any additional requirements proportional to the number of trips generated by said member (using either the average daily traffic or the peak hour daily traffic, whichever is more appropriate, given the specific problem to be remedied). The owners of any undeveloped lots shall contribute, based upon the traffic generation rate allocated to those lots in Conditions 3 and 12.
17. This permit hereby incorporates all of the conditions of Discharge Permit #3974-9010, issued on February 10, 2006, by the Wastewater Management Division, Agency of Natural Resources.

18. No further subdivision, alteration, and/or development of any parcel of land approved herein shall be permitted without the written approval of the District Environmental Commission.

Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6090(c).

Dated at Springfield, Vermont, on May 10, 2006.

By   
Michael Bernhardt, Chair  
District #2 Environmental Commission  
Natural Resources Board

Members participating in  
this decision:

Stanley Borofsky  
Theodor H. Friedman

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Any party may file a motion to alter with the District Environmental Commission within 15 days from the date of this decision, pursuant to Environmental Board Rule 31(A). Decisions on minor applications may be appealed only if a hearing was requested or a hearing was held by the District Environmental Commission. See 10 V.S.A. § 8504(k) for further restrictions on the right to appeal. Appeals must be filed with the clerk of the Environmental Court within 30 days of the date of the decision, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The Notice of Appeal must include all information required by Rule 5(b)(3) of the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

**STATE OF VERMONT  
NATURAL RESOURCES BOARD  
DISTRICT ENVIRONMENTAL COMMISSION #2W0851-1B**

**RE:** Westminster Business Park, LLC  
c/o Kasper & Associates, LLC  
P.O. Box 74  
Westminster Station, VT 05159  
and  
Russell L. Allen, General Manager  
P.O. Box 74  
Westminster Station, VT 05159

Application #2W0851-1B  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AND ORDER**  
10 V.S.A. §§ 6001 - 6092

**I. INTRODUCTION**

On May 19, 2005, Westminster Business Park, LLC and Russell L. Allen, General Manager filed an application for an Act 250 permit for positive Findings of Fact and Conclusions of Law under Criteria 5 Traffic and 9(K) Public Investments. The proposed park was previously reviewed under Application #2W0851-1, but a permit was not issued for the industrial park as the Commission was unable to make positive conclusions under Criteria 5 and 9(K).

The Commission, however, issued partial findings of fact and conclusions of law for the remaining criteria which are valid until August 3, 2006. The tract of land consists of 75 acres. The Applicants' legal interest are ownership in fee simple described in deeds recorded in the land records of the Town of Westminster.

Under Act 250, projects are reviewed based on the 10 Criteria of 10 V.S.A. § 6086(a) (1)-(10). Before granting a permit, the District Environmental Commission (Commission) must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 10, and the evidence received at a hearing held on June 22, 2005.

At the end of the final hearing, the Commission recessed the proceeding to allow the Applicants and the Vermont Agency of Transportation to determine if there was an agreed upon number of peak hour vehicle trips which could be accommodated by the existing highway infrastructure without causing or exacerbating unreasonable review of the record and congestion or safety problems. After extended discussions the Applicant and the Agency of Transportation reached agreement on permit conditions for vehicle trips for the five lots which would be developed as a result of the project. On April 1, 2006, the Commission gave notice of the proposed conditions to all parties and gave a response date for parties to comment by April 17, 2006. No comments have been received. The Commission adjourned the hearing on May 9, 2006, after review of the record and completion of Commission deliberations.

## **II. PARTY STATUS**

### **A. Preliminary Party Status Determinations**

Parties to this application who attended the hearing are:

1. The Applicant, by Robert Kasper, Esq.
2. The Municipality of Westminster, by Glenn Smith.
3. The Westminster Municipal Planning Commission.
4. The Windham Regional Planning Commission, by James Matteau.
5. The State of Vermont, Agency of Transportation, by Trevor Lewis, Esq. and Bernard Byrne.

The following adjoining property owners were either admitted as parties or denied party status:

6. Holiday Eames --Admitted: Criteria 5 and 9(K).
7. Scott West --Admitted: Criteria 5 and 9(K).

**V. SUMMARY CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit #2W0851-1B, will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A. § 6086(a).

**VI. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #2W0851-1B is hereby issued.

Dated at Springfield, Vermont, on May 10, 2006.

By 

Michael Bernhardt, Chair  
District #2 Environmental Commission  
Natural Resources Board

Commissioners participating  
in this decision:

Stanley Borofsky  
Theodor H. Friedman

Any party may file a motion to alter with the District Environmental Commission within 15 days from the date of this decision, pursuant to Environmental Board Rule 31(A). See 10 V.S.A. § 8504(k) for further restrictions on the right to appeal. Appeals must be filed with the clerk of the Environmental Court within 30 days of the date of the decision, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The Notice of Appeal must include all information required by Rule 5(b)(3) of the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

Exhibit List #2W0851-1B  
Westminster Business Park, LLC and  
Westminster Sand & Gravel - Russell L. Allen

No.	Date Admitted/ Received	By	Subject
1	6/22/05	Applicant	Cover Letter (5/29/05) from Russell Allen
2	"	"	Act 250 Application
3	"	"	Location Map
4	"	"	Letter (4/28/05) from Peter Boemig
5	"	"	AOT Permit Application (4/27/04)
6	"	"	Revaluation of Traffic (4/28/05)
7	"	"	Warranty Deed / Westminster Business Park Partners, LLC and Lawrence R. and Diane S. Allen
8	7/25/05	AOT	Response (7/22/05) to Recess Memo by Trevor Lewis, AAG
9	2/1/06	ANR	Application for Stormwater Discharge Permit (1/26/06)
10	2/21/06	"	Authorization to Discharge Permit No. 3974-9010 (2/10/06)



**CERTIFICATE OF SERVICE**  
**2W0851-1B**

I hereby certify that I sent a copy of the foregoing Land Use Permit, Findings of Fact and Conclusions of Law and Exhibit List on May 10, 2006, by U.S. Mail, postage prepaid, to the following:

Westminster Business Park, LLC  
c/o Robert Kasper  
Kasper & Associates, LLC  
P. O. Box 574  
Walpole, NH 03608

Westminster Sand & Gravel  
P. O. Box 178  
Westminster Station, VT 05159

Russell L. Allen, General Manager  
P. O. Box 74  
Westminster Station, VT 05159

Westminster Selectboard  
Paul Harlow, Chair  
P.O. Box 147  
Westminster, VT 05158

Westminster Town Planning  
Walter Jennison, Chair  
P.O. Box 147  
Westminster, VT 05158

Windham Regional Commission  
Att: James Matteau  
139 Main St., Suite 505  
Brattleboro, VT 05301

Trevor Lewis, Assist. Attorney General  
National Life Building, Drawer 33  
Montpelier, VT 05633-5001

Scott and Wanda West  
P. O. Box 78  
Westminster Station, VT 05159

Holiday Eames  
P. O. Box 103  
Westminster Station, VT 05159

Westminster Town Manager  
Glenn F. Smith  
P.O. Box 147  
Westminster, VT 05158

Elizabeth Lord, Esq.  
Land Use Attorney  
Agency of Natural Resources  
103 So. Main St., Ctr. Bldg. 3rd Fl.  
Waterbury, VT 05671-0301

**FOR INFORMATION ONLY**

District 2 Environmental Commission  
100 Mineral Street, Suite 305  
Springfield, VT 05156

Westminster Town Clerk  
Doreen Woodward  
P.O. Box 147  
Westminster, VT 05158

Eagle Times, Chris Fleisher  
401 River Road  
Claremont, NH 03743

Randall Lloyd, Public Service Dept.  
112 State Office Building  
Montpelier, VT 05620-2601

James B. McCarthy  
Engineering Services  
Vermont Agency of Transportation  
One National Life Drive, Drawer 33  
Montpelier, VT 05633

Certificate of Service #2W0851-1B  
Page Two

Bernard Byrne  
Traffic Research Engineer  
Vermont Agency of Transportation  
National Life Building, Drawer 33  
Montpelier, VT 05633

Marian White  
Agency of Agriculture, Food & Markets  
116 State St., Drawer 20  
Montpelier, VT 05620-2901

Peter Boemig  
SVE Associates  
P. O. Box 1818  
Brattleboro, VT 05302

Walt Jennison, Chair  
Planning & Development  
P.O. Box 147  
Westminster, VT 05158

By: April Hensel /sup  
April Hensel  
District 2 Coordinator